87-1887

Docket No.

Supreme Court, U.S.
FILED
JAN 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

October Term, 1987

CLIFTON J. HUMPHRIES,

Petitioner,

V.

DIRECTOR, OFFICE OF WORKERS COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR; CARGILL, INCORPORATED; AND COMMERCIAL UNION INSURANCE COMPANY,

Respondents.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

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Counsel for Petitioner

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APPENDIX A

F I L E D
October 30, 1987

U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEAL

FOR THE FOURTH CIRCUIT

NO. 87-2508

Clifton J. Humphries,

Petitioner,

versus

Director, Office of Workers' Compensation Programs, etc., et al,

Respondents.

The petitioner's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the

petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Phillips, with the concurrence of Judge Ervin and Judge Wilkinson.

For the Court,

JOHN M. GREACEN
CLERK

APPENDIX B

P U B L I S H E D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 87-2508

Clifton J. Humphries,

Petitioner,

versus

Director, Office of Workers Compensation Programs, United States Department of Labor; Cargill, Incorporated; Commercial Union Insurance Company,

Respondent.

On Petition for Review of an Order of the Benefits Review Board.

Argued July 1, 1987.
Decided August 28, 1987

Before PHILLIPS, ERVIN and WILKINSON, Circuit Judges.

Sidney Harison Kelsey, Jr. for Petitioner; Forest Anthony Nester (Seawell, Dalton, Hughes & Timms on brief) for Respondents.

CORRECTED OPINION/STATUS
CHANGE TO PUBLISHED

PHILLIPS, Circuit Judge:

This appeal challenges the Benefits Review Board's conclusion that a maritime employee's injury did not occur on a maritime situs, so that his injury cannot be compensation under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 et seq. The employee also raises various other issues pertaining to the decision by the Board. We conclude that the Board correctly decided that the injury did not fall within the jurisdiction of the Act, and thus affirm without addressing the other issues

raised.

I

On December 23, 1974, a car struck and seriously injured petitioner Clifton J. Humphries. At the time of the accident, Humphries, a ship foreman for respondent Cargill, Inc., was working in Chesapeake, Virginia, as a shift foreman on Cargill's second loading shift from 3:30 P.M. to midnight. As one of his job duties as shift foreman, Humphries was required to pick up food for employees working overtime. Cargill imposed this responsibility on the shift foreman as a matter of company policy and on its direct orders in order to prevent interruptions in loading and unloading operations on the later shifts. At approximately 10:00 P.M., Humphries

left the Cargill terminal to pick up a meal for one of the overtime workers at a restaurant approximately one and one-half miles from the loading operation. Humphries picked up the meal but, as he left the restaurant, experienced car trouble. When Humphries left his car to check under the hood, a passing motorist struck him. Humphries suffered severe spinal cord and head injuries.

When Humphries filed a claim for benefits under the LHWCA, Cargill responded with a petition for review and hearing before an Administrative Law Judge (ALJ). After a full evidentiary hearing, the ALJ decided in favor of Humphries on most of the contested issues after ruling that Humphries had fully established jurisdiction under the Act.

Cargill petitioned for review

by the Benefits Review Board, challenging the ALJ's decision on jurisdiction, as well as the relief awarded. Humphries cross-appealed on the ALJ's determination of his average weekly wage and the ALJ's disallowance of a portion of his attorney's fee request. The Board reversed the ALJ, concluding that Humphries' injury was not covered under the LHWCA because, at the time of his injury, he was not on a maritime situs. Humphries then petitioned for review of the Board's order and applied for enforcement of the ALJ's order.

II

Before 1972, LHWCA coverage was determined primarily by the traditional "locality" test of maritime tort jurisdiction. Under this test, the Act covered workers injured on

navigable waters, while those injured on adjoining land, pier, or wharf were afforded only state workmen's compensation coverage. A longshoreman moving cargo from ship to pier passed in and out of coverage as he worked.

In 1972, Congress amended the LHWCA to protect "amphibious workers" who moved back and forth from ship to land during their maritime activities. Two Amendments to the LHWCA accomplished this purpose. First, Congress extended the Act's coverage landward by including "any adjoining pier, wharf, drydock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel. 33 U.S.C. § 903(a) (emphasis added). This so-called "situs requirement" not only expanded LHWCA coverage spatially but also created

potential coverage for many workers whose occupations had never before been covered. Congress therefore added a parallel "status requirement," limiting the landward coverage to those workers "engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, ship builder, and ship-breaker." 33 U.S.C. § 902(3).

While in theory the conjunction of the "status" and "situs" requirements might seem to promise more uniform and predictable coverage, it created new and intractable jurisdictional problems of the sort we encounter in this appeal. In this case, the ALJ found that Humphries was engaged in "maritime employment" at the time of his accident, and thus met the status requirement. While Cargill implies

on appeal that procuring a meal for a longshoreman is not really "maritime employment," it never seriously contested Humphries' status before the ALJ or the BRB. In any event, Humphries' "status" does not depend on the specific task he was performing at the time of his injury, Brady-Hamilton Stevedore Co. v. Herron, 568 F.2d 137, 140 (9th Cir. 1978), and as a shift foreman supervising and facilitating a loading operation Humphries was clearly "engaged in maritime employment."

The difficult question is whether Humphries can also meet the Act's "situs requirement," i.e., whether he was injured in an "adjoining area customarily used by an employer in loading . . . a vessel." It is generally settled that a covered situs need not be used exclusively for maritime purposes or be within any specified distance

of navigable waters or a "maritime" operation. Perkins v. Marine Terminals Corp., 673 F.2d 1097, 1101-1102 (9th Cir. 1982). There is, however, no single convincing test for determining just where the geographical boundaries of coverage under the LHWCA lie.

The Third Circuit, in a case heavily relied on by Humphries, attempted to solve the problem by folding the situs requirement into the status requirement, concluding that so long as the worker is engaged in maritime employment his physical location at the time of his injury is irrelevant. Sea-Land Service, Inc. v. Director, OWCP, 540 F.2d 629, 636-39 (3d Cir. 1976). This approach to the jurisdictional problem created by the Act offers the advantage of preventing the "checkered coverage" created by an arbitrary geographical test. It

also, however, effectively reads the explicit situs requirement out of the Act. The Supreme Court has rejected such "simplifications" of the LHWCA, observing that both the status and situs requirements of the Act must be met independently, and that any resulting "curious hole" in coverage is simply a product of Congress's statutory scheme. See Herb's Welding, Inc, v. Gray, 470 U.S. 414, 426-27 (1985) (noting, inter alia, that "there will always be a boundary to coverage, and there will always be people who cross it during their employment."). See also Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977).

While the Sea-Land approach is unacceptable, an alternative requires a difficult exercise in line drawing. The Fifth Circuit, in an opinion which struggled bravely with the issue, ended

up with little more than a litany of factors which are not conclusive in a situs determination - absolute contiguity with navigable waters, fence lines, local designations of the area, exclusive use for maritime purposes, and so on. See Texports Stevedore Co. v. Winchester, 632 F.2d 504 (5th Cir. 1980). The Ninth Circuit, in what at first glance at least seems a more practical approach, proposed four factors for a situs determination: (1) the particular suitability of the site for maritime purposes; (2) whether adjoining properties are devoted primarily to uses in maritime commerce; (3) proximity to the waterway; and (4) whether the adjoining site is as close to the waterway as feasible. Brady-Hamilton, 568 F.2d at 141. The Fourth Circuit has addressed the situs issue, but without purporting to offer

a comprehensive test. See Newport News Shipbuilding and Dry Dock Co. v. Graham, 573 F.2d 167, 169 (4th Cir. 1978) (finding jurisdiction when the situs of a worker's injury was an "integral part [ ] of the shipyard" despite the distance of the situs from the waterway).

The ALJ made a number of findings of fact on which he premised his jurisdictional conclusions. His conclusion on the situs issue itself, while inbued with "factual" qualities, is essentially a mixed question of law and fact which we, like the Board, can review for errors of law. See Levins v. Benefits Review Board, 724 F.2d 4, 6 (1st Cir. 1984) (reviewing an ALJ's determination of maritime "status," and noting "that neither this court nor the Board owes special deference to the ALJ with respect to

determinations of statutory policy, even though these may be 'fact sensitive'"). We agree with the Board that the ALJ erroneously concluded that Humphries met the situs requirement on the facts of this case.

While the ALJ cited Sea-Land to support his conclusion, he at least ostensibly based his decision, as the Act requires, on the character of the area in which the accident occurred rather than Humphries' status at the time of the accident. He observed that the restaurant was located in an area "customarily," though not "primarily," used for significant maritime activities, along a public highway on which various maritime employers maintained terminal facilities. The restaurant itself was several hundred yards from the Elizabeth River. Citing Texports as authority, the ALJ noted

that "[s]o long as the site is close to or in the vicinity of navigable waters, or in a neighboring area, an employee's injury can come within the Act." See Texports, 632 F.2d at 514.

Without venturing to offer a touchstone for all future LHWCA jurisdictional questions, we conclude that these findings by the ALJ do not demonstrate that Humphries was injured on a maritime situs. Humphries' accident occurred well over a mile from the Cargill terminal, along a public highway which did not connect any portions of Cargill's operations or traverse continuous or contiguous terminal areas. The restaurant itself, while arguably located in a "waterfront area," was separated from the Elizabeth River and the nearest maritime terminal by a residential neighborhood. Cargill's workers did not patronize the restaurant

because of its proximity to the Elizabeth River and at least one other restaurant was nearer to the Cargill facility. The restaurant was not, as in Graham, an "integral part" of the Cargill terminal.

We feel that this combination of circumstances militates against any description of the accident scene as a maritime situs. As the Board aptly noted, the location of Humphries' activities at the time of his injury was "fortuitous," and did not result from "hazards uniquely inherent in the shipyard industry." The LHWCA requires us to draw a spacial line for coverage under the Act. We agree with Humphries that a broad interpretation of the maritime situs requirement is warranted on statutory and policy grounds. See Texports, 632 F.2d at 516. Were we to read the

situs requirement so broadly as to embrace this claim, however, we would come perilously close to eliminating it entirely.

AFFIRMED.

APPENDIX C

P U B L I S H E D
FILED AS PART
OF THE RECORD

DEC 15 1986
(date)

LINDA M. MEEKINS/sdb
Clerk of the Board
Benefits Review Board

DECISION and ORDER
En Banc

U.S. DEPARTMENT OF LABOR

Benefits Review Board
1111 20th Street., N.W.
Washington, D C 20036

BRB Nos. 86-636
and 86-636-A

CLIFTON J. HUMPHRIES	)
	)
Claimant-Respondent	)
Cross-Petitioner	)
	)
v.	)
	)
CARGILL, INCORPORATED	)
	)
and	)
	)
COMMERCIAL UNION INSURANCE COMPANY	)
	)
Employer/Carrier-	)
Petitioners	)
Cross-Respondents	)

Appeal of the Decision and Order and Supplemental Decision and Order Awarding Attorney's Fees of Frank J. Marcellino, Administrative Law Judge, United States Department of Labor.

Sidney H. Kelsey, Jr., Virginia Beach, Virginia, for claimant.

Forest A. Nester (Seawell, Dalton, Hughes & Timms), Norfolk, Virginia, for employer/carrier.

Before: RAMSEY, Chief Administrative Appeals Judge, and SMITH, BROWN, DOLDER and MCGRANERY, Administrative Appeals Judges.

Ramsey, Chief Administrative Appeals Judge:

Employer appeals and claimant cross-appeals the Decision and Order and Supplemental Decision and Order Awarding Attorney's Fees (85-LHCA-933) of Administrative Law Judge Frank J. Marcellino awarding benefits pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 et seq. (the Act). We must affirm those determinations of the administrative law judge which are rational, supported by substantial

evidence, and consistent with applicable law. 33 U.S.C. §921(b)(3); O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

At the time of his injury, claimant was employed as a ship foreman at employer's grain loading facility in Chesapeake, Virginia. He was in charge of loading and inspecting grain, and was responsible for relieving shift foremen when necessary. As part of his job, claimant or another supervisor was required to obtain meals for certain employees working overtime. This meal service was provided on an irregular basis, but it was employer's policy that a supervisor would obtain the meals to avoid disrupting the work process. As employer did not have an on-site meal facility, meals were obtained from one of several restaurants in the Chesapeake area.

On December 23, 1974, during the course of his employment, claimant left employer's dockside facility and drove his own car approximately one and one-half miles to Veal's Restaurant to obtain a meal for a grain inspector. Claimant parked his car in front of the restaurant on Bainbridge Boulevard, a major north-south artery in the waterfront area of Chesapeake. Although claimant was not required to patronize Veal's Restaurant, Cargill employees preferred its food over that of other closer restaurants, and employer maintained a charge account there for employee's use. After obtaining the meal, but before leaving the front of the restaurant, claimant experienced car problems and checked under the hood. While inspecting his car, claimant's car was struck by another vehicle and driven approximately fifty

feet up an embankment. Claimant was pinned between a telephone pole and a street sign while partially under his car. As a result of the serious spinal and head injuries he sustained, claimant is permanently and totally disabled and confined to a wheelchair. This claim for benefits ensued.

The threshold question before the administrative law judge was whether the claim came within the jurisdictional provisions of the Act. The administrative law judge correctly determined that for jurisdiction to exist, claimant must be engaged in maritime employment (status) and must be injured at a maritime situs. 33 U.S.C. §§902(3), 903(a); Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249, 6 BRBS 150 (1977). The administrative law judge further determined that claimant was engaged

in maritime employment at the time of injury. That determination is not challenged on appeal.

The main focus of this appeal is the administrative law judge's holding that claimant was injured on a maritime situs pursuant to Section 3(a) of the Act, 33 U.S.C. §903(a). [1] In so holding, the administrative law judge concluded that the site of the accident had a sufficiently close nexus with maritime activity to be considered an "adjoining area" pursuant to Section 3(a). The

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[1] Section 3(a) of the Act provides that:

> Compensation shall be payable under this Act. . . only if the disability or death results from an injury occurring upon the navigable waters of the United States including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel.

33 U.S.C. §903(a) (emphasis supplied).

administrative law judge based this finding on the proximity of claimant's injury to the waterfront (3/10 to 4/10 mile) and to employer's grain loading facility (approximately 1½ miles). The administrative law judge also found that the general area in which the injury occurred is customarily used for significant maritime activities. Concluding that a maritime situs finding in this case is consistent with the remedial purpose of the Act and avoids having employees walk in and out of coverage during the course of their employment, the administrative law judge found jurisdictional requirements met.

On appeal, employer challenges the administrative law judge's conclusion that claimant was injured on a maritime situs. Specifically, employer argues that claimant was not injured at any

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of the areas enumerated in Section 3(a), and that the administrative law judge's determination that the area surrounding Veal's Restaurant is an adjoining area pursuant to the Act is not in accordance with law.

For the reasons expressed herein, we agree with employer's contentions, and reverse the administrative law judge's conclusion that claimant was injured on a maritime situs as defined in the Act.

In reaching his conclusion, the administrative law judge relied on cases extending the Act's jurisdiction to general areas used customarily for a significant maritime purposes. See Texports Stevedores Co. v. Winchester, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980); Sawyer v. Tideland Welding Service, 16 BRBS 344 (1981). Finding that the Act's coverage is not foreclosed

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when an injury occurs on a public road, see Sealand Services v. Director, OWCP, 540 F.2d 629 (3d Cir. 1976), the administrative law judge extended the Act's jurisdiction by finding that the general area surrounding Veal's Restaurant is customarily used for significant maritime purposes.

Both Winchester, supra, and Sawyer, supra, involved claimants who were injured in the course of their maritime employment in areas not immediately adjacent to the waterfront. In Winchester, the United States Court of Appeals for the Fifth Circuit extended coverage to a gear room not directly adjoining the waterfront, but which was part of employer's overall loading process. 632 F.2d at 516, 12 BRBS at 728. In Sawyer, the Board found that a public highway served a maritime purpose and was therefore a covered

situs because it was the sole access between two of employer's maritime facilities. 16 BRBS at 346.

The cases relied upon by the administrative law judge are distinguishable from the case before us, and are therefore not controlling. An "adjoining area" is qualified by the Act as an area "customarily used by an employer in loading, unloading, repairing, or buiding a vessel." 33 U.S.C. §903(a). The injuries in both Winchester and Sawyer occurred at a locus used for one of the specified maritime purposes. The injury in the instant case occurred at a non-maritime locus, in front of a restaurant on a public highway which was located in an area where both general maritime and non-maritime activities were occurring. Unlike Winchester and Sawyer, the place of injury in the instant

case does not meet the statutory definition.[2]

We also hold that the administrative law judge's conclusion is inconsistent with the test for "adjoining area" developed by the United States Court of Appeals for the Ninth Circuit in Brady-Hamilton Stevedore Co. v. Herron, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978). In Herron, the court discussed the 1972 amendments to the Longshore Act and the effect of the new Section 3(a), by which Congress extended coverage to land-based activities. Citing the Supreme Court's decision in Caputo,

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[2]Furthermore, we are not persuaded by the administrative law judge's reliance on Sealand Services, supra, a decision in which the situs requirement of the Act was virtually eliminated. In a subsequent decision, the Supreme Court clearly indicated that an employee must have both status and situs to be covered under the Act. See Caputo, supra.

supra, the court noted that Congress adopted the 1972 amendments in order to accomplish two purposes: first, to recognize that modern cargo handling techniques have moved much of a longshoreman's work onto land; and second, to provide continuous coverage to workers who otherwise were covered for only part of their activities. Applying this rationale, the court in Herron, supra, determined that in order to further the goal of uniform coverage, the phrase "adjoining area" in Section 3(a) should be read to describe a functional relationship that does not in all cases depend on physical contiguity with navigable waters. The court stated that in determining whether a site is an "adjoining area", consideration should be given to the following factors:

1. The particular suitability

of the site for the maritime uses referred to in the statute.

2. Whether adjoining properties are devoted primarily to uses in maritime commerce.

3. The proximity of the site to the waterway.

4. Whether the site is as close to the waterway as is feasible given all of the circumstances.

Herron, supra, 568 F.2d at 141, 7 BRBS at 411. See also Palma v. California Cartage Co., 18 BRBS 119 (1985); Bennett v. Matson Terminals, Inc., 14 BRBS 526 (1981).

Analysis under this test recognizes that the location of a particular activity may be fortuitous and not based on maritime concerns. Here Veal's Restaurant is a public restaurant whose purpose involves food service rather than any maritime activity. It is located in an industrial area with much of the surrounding property devoted to maritime commerce. However, the area is not primarily used for or particularly suited to maritime commerce,

as evidenced by the existence of other non-maritime activities in close proximity. The record indicates that a shopping center, high school, and other non-maritime businesses are in the same area as the restaurant, and that a residential neighborhood is between the restaurant and the river.

We find this approach to be inconsistent with a recent Board decision involving similar facts. In Alford v. M.P. Industries of Florida, 16 BRBS 261 (1984), the Board declined to extend the Act's jurisdiction to a claimant injured in an automobile accident while on a maritime employment-related errand in downtown Jacksonville, Florida. In Alford, the Board noted that the maritime situs requirement specifically limits the Act's coverage, and that a public route through a downtown area of a city is not an adjoining area

pursuant to Section 3(a). 16 BRBS at 263. Furthermore, in Newport News Shipbuilding and Drydock Co. v. Graham, 573 F.2d 167, 8 BRBS 241 (4th Cir.), cert. denied, 439 U.S. 979 (1978), the United States Court of Appeals for the Fourth Circuit recognized that the situs requirement is met when a particular location is an integral part of a shipyard or customarily used by an employer in repairing or building a vessel. This holding is consistent with our conclusion that claimant's injury did not occur at a covered situs because the restaurant is not integral to the maritime activity specified in the Act.

At the time of his injury, claimant was not exposed to the hazards uniquely inherent in the shipyard industry. Instead, claimant was injured on a public street in front of a restaurant

in an area where maritime industry co-exists with other non-maritime activities including businesses and residential neighborhoods. As this area is not primarily used for or particularly suited to maritime commerce, and because the location of the restaurant is fortuitous and not based on maritime concerns, we must reverse the administrative law judge's situs determination, and hold that the claim is outside the jurisdiction of the Act. We therefore need not consider the remaining arguments on appeal or those raised in the cross-appeal.

Accordingly, the Decision and Order Awarding Benefits is reversed.[3]

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[3] By order dated March 31, 1986, the Board granted a stay of accrued benefits in this appeal and set the case for expedited review. As we have reversed the award, the stay is no longer necessary and is hereby dissolved.

SO ORDERED.

s/ROBERT L. RAMSEY
ROBERT L. RAMSEY, Chief
Administrative Appeals Judge

We Concur:

s/ROY P SMITH
ROY P. SMITH
Administrative Appeals Judge

s/JAMES F. BROWN
JAMES F. BROWN
Administrative Appeals Judge

s/NANCY S. DOLDER
NANCY S. DOLDER
Administrative Appeals Judge

s/REGINA C. MCGRANERY
REGINA C. MCGRANERY
Administrative Appeals Judge

Dated this 15th day
of December 1986

APPENDIX D

U.S. DEPARTMENT OF LABOR
Office of Administrative Law Judges
Suite 700-1111 20th Street, N.W.
Washington, D.C. 20036

Case No. 85-LHC-933

OWCP No. 5-48974

In the Matter of	:
	:
CLIFTON J. HUMPHRIES,	:
Claimant	:
	:
v.	:
	:
CARGILL, INC.,	:
Employer	:
	:
and	:
	:
COMMERCIAL UNION INSURANCE COMPANY,	:
Carrier	:
	:
and	:
	:
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,	:
Party-in-Interest	:

Sidney H. Kelsey, Jr., P.C., Esquire
3408 Boyd Road
Virginia Beach, VA 23452
For the Claimant

Forest A. Nester, Esquire
Seawell, Dalton, Hughes & Timms
900 Wainwright Building

Bute and Duke Streets
Norfolk, Virginia 23510
For the Employer

Before: FRANK J. MARCELLINO
Administrative Law Judge

DECISION AND ORDER

This is a claim for workers' compensation benefits arising under the Longshoremen's and Harbor Workers' Compensation Act as amended, 33 U.S.C. §901 et seq., hereinafter referred to as the Act. A formal hearing was held in Hampton, Virginia on August 22, 1985 at which all parties were afforded an opportunity to present testiminial and documentary evidence.

Stipulations

On the record at the hearing the parties stipulated to the following matters which I find to be established:

1. The date of the accident and injury is December 23, 1974.

2. Employer was advised of and learned of the accident on December 23, 1974.

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3. An employer employee relationship existed at the time of the accident.

4. The claim was filed on April 6, 1984.

5. The notice of controversion was filed on April 30, 1984.

6. Claimant has received benefits from the Commonwealth of Virginia.

7. Employer has paid medical benefits to cover the cost of equipment

Statement of Facts

Claimant, a 59-year-old man, has worked for Employer for more than seventeen years. He began work in 1957 and became a lead man assisting the foreman. Eventually, he became a scale man loading ships and checking the scales. Finally he became a ship foreman, responsible for loading grain, inspecting grain, and relieving the shift foreman when necessary.

On December 23, 1974 Claimant, a ship foreman, was substituting as a shift foreman on the second shift from 3:30 p.m. to midnight. He assumed

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full responsibility for the plant and for supervision of its employees. As one of his job duties, Claimant was required to secure meals for certain employees working overtime (Tr. at 82, 222). At approximately 10:00 p.m., he left the plant to pick up a meal for Sam Warren, a grain inspector who was working overtime. He drove his own car to Veal's Restaurant, approximately 1½ miles away (Tr. at 228, 255), where Employer currently maintained its only charge account for meals. (Tr. at 95, 225-226). He charged the meal and procured a receipt. When he left the restaurant, he experienced car problems and decided to check under the hood of his car. While he was inspecting his car, another driver hit the tail of his car into Claimant's car and knocked it fifty feet up an embankment. Claimant was

pinned between a sign post and a phone pole partially under his car.

As a result of this accident, Claimant sustained severe spinal cord and head injuries, rendering him quadriplegic. He was hospitalized from December 23, 1974 to December 19, 1975. During this time he underwent several major surgical procedures and received five months rehabilitation at Woodrow Wilson Rehabilitation Center. Before his release from the hospital, he and his wife were taught catheter care, irrigation, and other procedures required to maintain the basic activities of his daily living. Claimant has lost completely his senses of taste, touch, and smell, and has lost partially his sense of hearing. His bowel and bladder functions are totally impaired resulting in incontinence. Claimant has been diagnosed as being permanently

and totally disabled. (See Claimant's Exhibit Number 6). Claimant's condition has worsened progressively, and he has experienced kidney infections, breathing problems, swollen ankles, and bowel accidents. He constantly must deal with pain, spasms, incontinence, indigestion, inactivity and dependence. He requires skilled nursing care and attendance at all times which his wife has been providing since he was released from the hospital.

Notice of the Claim

Claimant's injury occurred on December 23, 1974. Employer filed a report of accident with the Industrial Commssion of Virginia on December 24, 1974 (Employer's Exhibit Number 4); however, it did not file a report of accident with the United States Department of Labor at that time. Claimant filed his Notice of Claim

on April 6, 1984, almost 10 years after his injury. (Claimant's Exhibit Number 2). Employer filed its Notice of Controversion on April 30, 1984 contesting, among other things, the timeliness of both notice and filing of the claim. (Claimant's Exhibit Number 2; Employer's Exhibit Number 3).

Section 13(a) of the Act provides that the right to compensation for disability is barred unless the claim is filed within one year after the injury. Section 30(f) of the Act provides, however, that where the employer or carrier has been given notice or has knowledge of the injury and fails, neglects, or refuses to file a report as required by Section 30(a), the one-year limitation period of Section 13(a) shall not begin to run until such report is filed with

the Secretary of Labor.

In this case, Employer acquired knowledge of the accident on the date it occurred, but failed to file a report with the Labor Department until September 24, 1984. (Claimant's Exhibit Number 2). Although Employer filed a report with a state agency, this filing did not satisfy the reporting requirement of Section 30(a) of the Act. See Director, Office of Workers' Compensation Programs v. National Van Lines, Inc., 613 F.2d 972, 984 (D.C. Cir. 1979). I find, therefore, that Claimant's notice and filing of his claim were timely because Employer's failure to file an accident report with the Labor Department prevented the one-year limitation period from running.

Jurisdiction

To come within the jurisdiction of the Act, Claimant must qualify under

both the status and situs tests. Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977). In order to satisfy the status requirement and become eligible for compensation, Claimant must qualify as a "person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations..." 33 U.S.C. §902(3) (Supp. V 1975).

Employer is in the business of receiving and storing grain and other products at its facilities on the Elizabeth River. Claimant's duties, while acting as a shift foreman, involved supervising the loading and unloading of cargo moored at Employer's facility, as well as supervising employees. His duties involved some inspections on the vessels themselves, as well as a variety of land-based activities.

Claimant testified that while

acting as a shift foreman on the second shift, he was required by Employer to secure meals for men who worked overtime. (Tr. at 60-61). Securing meals was a company policy and a direct order by Employer, rather than a courtesy or favor. (Tr. at 222-223). This policy served to ensure that the loading and unloading operations would continue without interruption. Because Employer had no facilities on its premises to provide meals to its employees, Claimant was required to leave Employer's premises to secure the meal. The fact that Claimant was securing a meal at the time of this injury is of no real consequence, because satisfaction of the status requirement does not depend upon the task the employee was performing at the moment of the injury. See Brady-Hamilton Stevedore Co. v. Herron, 568 F.2d 137 (9th Cir. 1978).

Claimant's presence at the site of his injury was related directly to fulfilling the duties and responsibilities of his job. At the time and place of his injury, Claimant maintained supervision over and responsibility for the loading activities of Employer's maritime workers. In addition, he carried a radio and was available at all time for communications regarding the longshore activities on Employer's premises. I find, therefore, that Claimant's duties and responsibilities, as well as his actual work activities, clearly establish his status as a longshoreman under the Act.

In order to satisfy the situs requirement, Claimant's injury must have occurred upon the navigable waters of the United States, which are defined in the Act to include any "adjoining

area customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C. §903(a) (Supp V 1975). Claimant was injured on Bainbridge Boulevard in front of Veal's Restaurant. (See Claimant's Exhibit Number 1; Employer's Exhibit Number 1). Although Bainbridge Boulevard is a public road, coverage under the Act is not foreclosed by the fact that the accident occurred on a public road. Sea-Land Service, Inc. v. Director, OWCP, 540 F.2d 629 (3rd Cir. 1976). The Act requires only that the general area in which the accident occurred be used customarily for significant maritime activities. Sawyer v. Tideland Welding Service, 16 BRBS 344 (1984). So long as the site is close to or in the vicinity of navigable waters, or in a neighboring area, an employee's injury can come within the Act. Texports

Stevedore Co. v. Winchester, 632 F.2d 504, 514 (5th Cir. 1980).

Claimant contends that Veal's Restaurant was in an area primarily and customarily used by all modes of transportation for loading and unloading cargo, serving all waterfront docking facilities, including Employer's. (Claimant's Exhibit Number 5, p. 4, para. 25). Employer, on the other hand, contends that Veal's Restaurant was in an area "customarily, but not primarily," devoted to transportation related to Employer's operation. (Employer's Exhibit Number 6, p. 3, para. 35). The Act, however, does not require that the area be used primarily for maritime activities as long as it is customarily used for significant maritime activities. See Sawyer, 16 BRBS 344.

Veal's Restaurant was located

in the same general industrial area on the side of Bainbridge Boulevard on which the Cargill, Texaco, Amoco, and Elizabeth River Terminal facilities abut the Elizabeth River. (Tr. at 65-68, 71, 75, 82, 99-100, 102-104, 221, 228). Claimant testified that these surrounding businesses were maritime in nature and required the services of longshore workers. (Tr. at 67). Mr. Henry T. Thrasher, a real estate appraiser, testified that the area in which Veal's was located was basically an industrial area associated with maritime activities and the waterfront. (Tr. at 205-206). He noted that two creeks, which branch directly off the Elizabeth River on which Employer's facilities lies, run all the way up to Bainbridge Boulevard. (Tr. at 210-211). This fact was corroborated by Mr. Charles Ryan, a

Cargill employee. (Tr. at 263). Mr. Ryan also testified, however, that Veal's was located in a residential area containing only light industry. (Tr. at 257).

After reviewing the maps submitted by both parties (Claimant's Exhibit Number 1; Employer's Exhibit Numbers 1 and 2) and after carefully considering the testimony given at the hearing, I find that the situs of the accident has a sufficiently close nexus with maritime activity to be considered an "adjoining area" under Section 3(a) of the Act. I base this finding on the fact that Claimant was injured only 3/10 to 4/10 of a mile from the waterfront (Tr. at 255) and approximately 1½ miles from Employer's facility. (Tr. at 228, 255). In addition, the evidence shows that the general area in which the accident occurred was

customarily used for significant maritime activities. This conclusion is also in keeping with the purpose of the Act. First, the Act must be construed liberally in favor of coverage to effectuate its broad remedial purpose. Perkins v. Marine Terminals Corp., 673 F.2d 1097, 1104 (9th Cir. 1982); Winchester, 632 F.2d at 515. Second, a broad interpretation of the maritime situs requirement reduces the number of workers walking in and out of coverage and promotes uniformity. See Winchester, 632 F.2d at 516.

In sum, at the time of his injury, Claimant was acting within the scope of employment as a longshoreman and was located in an area adjoining the Elizabeth River, where significant maritime activities customarily took place. I find, therefore, that Claimant has satisfied both the status and situs

requirements and that this case comes properly within the jurisdiction of the Act.

Average Weekly Wage

Under Section 8(a) of the Act, Claimant is entitled to permanent total disability benefits amounting to 66 2/3 percent of his average weekly wage at the time of the accident. The Claimant contends that his average weekly wage was approximately $423.00 based on a salary of $21,993.00 in 1974. Employer, on the other hand, contends that his average weekly wage was $267.65 based on a salary of $13,918.16 in 1974.

Claimant testified that he began 1974 earning $725.00 per month. In April, his salary was increased to $1,000.00 per month and remained the same through the time of his accident. The only other change in his earnings

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during 1974 was that in October or November he became entitled only to compensatory time, rather than overtime. (Tr. at 109). Claimant also testified that he received a bonus of approximately $1,200.00 in 1974.

The record contains two of Claimant's W-2 statements showing wages of $13,918.16 in 1974 and $8,075.00 in 1975. (Claimant's Exhibit Number 3; Employer's Exhibit Number 5). Claimant contends that the wages were earned entirely in 1974, but partially paid in 1975. Employer contends that the W-2 statements accurately reflect Claimant's wages for each year.

The testimony at the hearing was conflicting on whether Claimant's W-2 statements accurately reflected his earnings for each year. Claimant contends that because he did not work a day in 1975, all his wages were earned

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in 1974. On his Claim for Compensation (LS-203), however, Claimant noted at paragraph 31 that Employer paid him for six months of accrued sick leave after the injury. (Claimant's Exhibit Number 2). I find, therefore, that the earnings on the 1975 W-2 statement represent payments for Claimant's accrued sick leave and that they accurately reflect Claimant's income in 1975. I also find that Claimant's 1974 W-2 statement accurately reflects his income in 1974.

Based on Claimant's testimony, his W-2 statments, and his Claim for Compensation, I find that Claimant's earnings in 1974 were $13,918.16. Based on these earnings, I find that Claimant's average weekly wage at the time of the accident was $267.65. Claimant, therefore, is entitled to permanent total disability benefits

amounting to 66 2/3 percent of $267.65.

Medical Bills Incurred During 1985

Claimant has requested reimbursement for medical bills incurred as a result of two pass-out episodes in March and June of 1985. He submitted bills to Employer for emergency room care, a chest x-ray, and ambulance service, amounting to $295.00, but the carrier refused to pay them. (Claimant's Exhibit Number 4).

Claimant testified that he had two bowel accidents in which he passed out and was required to enter the hospital (Tr. at 78-79) He testified that Employer had paid for similar bills in the past and contends that Employer should be responsible for the payment of these bills as well. (Tr. at 79) At the hearing, Employer offered no evidence disputing liability for payment and did not cross-examine

Claimant on the issue.

Section 7(a) of the Act provides in part that Employer shall furnish medical treatment and hospital service "for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a) Because I find Claimant's pass-out episodes directly related to his total disability and the treatment necessary for his care, I find Employer is liable under Section 7(a) of the Act for payment of these medical bills.

Scope and Value of Nursing Services

Claimant seeks compensation for the nursing and attendant services rendered by his wife since the accident. Employer does not contest the right of Claimant's wife to receive compensation for her services but has put into issue the scope and value of Claimant's wife's services.

Claimant's wife has provided complete care to Claimant since the day he returned home from the hospital. Claimant testified that his wife performs his bowel maintenance program three times a week and assists him with bathing, dressing, skin care, and personal hygiene. (Tr. at 88-89) He testified that when he has a bowel accident his wife is required to change him and wash his clothes and the bedclothes. (Tr. at 89) He also testified that because he has lost his sense of feeling, his wife is required to take safety precautions for him by warning him of extreme temperatures. (Tr. at 89) He testified that he depends on his wife's services 24 hours a day, seven days a week.

Claimant's wife testified that she cares for Claimant almost 24 hours a day. (Tr. at 237) She testified

that Claimant's condition has declined progressively and that he has experienced respiratory and kidney problems recently. (Tr. at 233) She noted that Claimant's health has worsened substantially since Crawford Rehabilitation Services prepared its cost analysis estimation in 1984 and that caring for Claimant has become more difficult. (Tr. at 234-235). In addition to performing his bowel maintenance program, Claimant's wife takes care of his catheter and does an extraordinary amount of laundry and cleaning due to Claimant's condition. (Tr. at 238-239). She testified that her own health is declining and that she has undergone surgery twice in the past 5 years. (Tr. at 236). Dr. Spyros Philippakis, her treating physician, noted that due to Mrs. Humphries' cholecystitis and extensive arthritis of the spine, she should

avoid any heavy lifting and strain. (Claimant's Exhibit Number 6). Although she would like some assistance in caring for Claimant, she testified that she does not want someone in the house at all times.(Tr. at 240-241).

The record contains a cost analysis estimation of nursing services prepared on March 22, 1984 by Patsy E. Britt, a medical services consultant at Crawford Rehabilitation Services. (Claimant's Exhibit Number 7). The report states that the services of an RN (registered nurse) or an LPN (licensed practical nurse) are rarely needed for individuals with spinal cord injuries and that a nurse attendant could perform most of the required services. Mr. Britt noted, however, that an in-home nurse attendant is difficult to procure on the market due to the stringent licensing requirements. The report concluded that Claimant requires health care

services performed by an attendant at an in-patient health care facility or by an RN or LPN at home. The report noted that Claimant's wife is performing the services of a well-trained experienced nurse attendant.

In her report, Ms. Britt recommended the following nursing services for Claimant based on a wage survey for the Tidewater area without adjusting for inflation:

Recommendation 1 (with wife's services):1/

nurse attendant 4 hrs. a day/3 days a wk. $6.00/hr. $72 wk.

LPN 4 hrs. a day/3 days a wk. $9.50/hr. $114 wk.

Recommendation 2 (without wife's services):

LPN 4 hrs. a day/3 days a wk. $9.50/hr. $114 wk.
and
Companion 156 hrs. a wk. $3.35 hr. $522.60 wk.

1/ It is unclear from the report whether Recommendation 1 requires the services of both a nurse attendant and an LPN, or whether either one alone would suffice. At any rate, Recommendation 1 seems to correspond with the minimum amount of respite care Claimant's wife should have.

Recommendation 2 indicates that in the absence of his wife's services, Claimant would require care 24 hours a day, 7 days a week.

Paula Huffman, a rehabilitation counselor for Crawford Rehabilitation Services, testified that she accompanied Ms. Britt when they visited Claimant to evaluate his needs in 1984. (Tr. at 164). She noted that Crawford Rehabilitation Services specializes in consultation and referral, and does not actually provide health care services. She explained that she had requested to update the report because of Claimant's changed condition but was not granted leave to do so. (Tr. at 181-182). Ms. Huffman gave no specific testimony concerning the particular health care required by Claimant nor the cost to provide such care.

Toni Tarr, a registered rehabilitation nurse who works for

Commonwealth Health Care, testified that Claimant's condition had worsened since Ms. Britt's 1984 report and that Claimant requires more care than is indicated in that report. (Tr. at 119-120). She testified that Claimant's wife provides skilled care at the professional nursing level of an LPN or RN. (Tr. at 121-122, 136). She testified that although a nurse's aide could perform his bowel maintenance program only under a nurse's supervision in the hospital. (Tr. at 139-140). She also noted the difficulty in finding qualified individuals to perform in-home care. Finally she recommended that Claimant's wife be provided with respite care to enable her to get out of the house, to care for herself, and to do her own housework. (Tr. at 129-130).

Based on her evaluation of Claimant's condition, Ms. Tarr

recommended the following:

Minimum Care Necessary (10 hrs. per day):

LPN 4 hrs. a day/3 days a wk.

nurse's aide 6 hrs. a day/3 days a wk.

nurses's aide 10 hrs. a day/4 days a wk.

Ideal Care--Comparable to a Skilled Care Facility (16 hrs. per day):

LPN 4 hrs a day/7 days a wk.

nurse's aide 12 hrs. a day/7 days a wk.

Donald Dahlman, an administrator at Commonwealth Health Care, testified that Claimant requires the services of both a nurse's aide and an LPN or RN on a daily basis. (Tr. at 150). He also testified that Claimant's wife should be provided with respite care. (Tr. at 153). He explained that the wages contained in Mr. Britt's 1984 report are very minimum wages and are not realistic. (Tr. at 152). Mr. Dalhman reported the following pay rates based on the June 1985 pay scales

of Commonwealth Health Care (Tr. at 149, 159-160):

Occupation	Customer Charge (per hour)	Employee Wage (per hour)
nurse's aide	6.80	4.50
LPN	10.35	7.00
RN	12.70	9.20
companion aide	6.40	4.15
live-in companion	61.00 (per day)2/	45.00 (per day)

Mr. Dahlman concurred with Ms. Tarr's recommendation for the minimum and ideal care necessary for Claimant in his condition. Based on the pay rates he reported, he testified that Commonwealth Health Care would charge its customer $512.60 per week for the minimum care necessary (Tr. at 155) and $847.00 per week for the ideal care, which is comparable to that of a skilled care facility. (Tr. at

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2/ There is a discrepancy in the transcript which makes it unclear whether the daily charge is $61 (Tr. at 149) or $51 (Tr. at 160).

156-157). He noted, however, that if Claimant's wife was not available to provide care, Claimant would require an additional 8 hours per day of companion aide care in the event of an emergency. Such care would increase the weekly charge by $358.40. Upon converting the rates charged by Commonwealth Health Care to the rates paid to its individual care providers, the minimum care necessary would cost $345.00 per week ($4.50 x 58 hrs. of nurse's aide services plus $7.00 x 12 hrs. of LPN services), and the ideal care would cost $574.00 ($4.50 x 84 hrs. of nurse's aide services plus $7.00 x 28 of LPN services).

Based on the record and the testimony given at the hearing, I find that Claimant's wife is entitled to compensation for the nursing services she provides to her husband. Although

Ms. Britt and Ms. Tarr testified that a nurse's attendant could perform most of the required services, they noted that some of the services could be performed by a nurse's aide only under a qualified nurse's supervision. They also emphasized the scarcity of qualified in-home health care. In addition, Mr. Dalhman testified that a qualified nurse would be required to handle any emergencies or accidents that Claimant might have.

Both Ms. Britt and Ms. Tarr testified that Claimant's wife performs skilled care for her husband. Ms. Tarr, who has been a nurse for 13 years, testified that Claimant's wife provides professional care at the level of an RN or LPN. I find, therefore, that Claimant should be compensated at the level of an LPN for at least some part of her services.

Mr. Dalhman testified that Commonwealth Health Care pays its LPNs $7.00 per hour and its nurse's aides $4.50 per hour. Based on his credible testimony, I find these rates are consistent with the prevailing community charges for similar services and are appropriate rates at which to compensate Claimant's wife for her services. Accordingly, I find Claimant's wife is entitled to compensation at an hourly rate of $7.00 for 4 hours a day, 7 days a week, for her time expended on Claimant's bowel maintenance program, his bowel accidents, and other emergencies. I also find that Claimant's wife is entitled to compensation at an hourly rate of $4.50 for 12 hours a day, 7 days a week, for her time expended on other nursing services and attendant care. Thus, her total compensation amounts to $574.00 per

week. This plan corresponds with Ms. Tarr's recommendation that Claimant receive 4 hours of LPN care and 12 hours of nurse's aide care each day. This plan also is comparable to the amount of care that Claimant would receive in a skilled health care facility.

Section 8(f)

Employer asserts that Section 8(f) applies, thus limiting its liability for compensation payments to 104 weeks. 33 U.S.C. 908(f). Section 8(f) requires that the claimant have a pre-existing permanent partial disability or disorder, manifest to the Employer, which combines with the subsequent injury to result in a greater permanent disability. See American Mutual Insurance Co. v. Jones, 426 F.2d 1263 (D.C. Cir. 1970). Included in the category of pre-existing permanent disabilities are: economic

category of pre-existing permanent disabilities are: economic disabilities under Section 8(c)(21), scheduled losses under Section 8(c)(1)-(20), and physical disabilities which would discourage employers from employing individuals because of an increased risk of accident or compensation liability. C&P Telephone Co. v. Director, OWCP, 564 F.2d 503, 513 (D.C. Cir. 1977), rev'g Glover v. C&P Telephone Co., 4 BRBS 23 (1976); Johnson v. Brady-Hamilton Stevedore Co., 11 BRBS 427 (1979). Employer contends that Claimant's below-the-elbow arm amputation increased its risk of liability.

While working for Employer in 1957, Claimant suffered an employment-related injury requiring amputation of his left arm from below the elbow. (Tr. at 87-88). He was hospitalized for one week and returned

to work for Employer. (Tr. at 88). Although this injury qualifies as a scheduled loss under Section 8(c)(15) of the Act, the evidence shows that the injury was not disabling and that he was able to continue working until the time of his accident in 1974. Claimant continued to work for Employer for 17½ years holding various positions, performing his duties without difficulty, and receiving promotions over the years. (Tr. at 88). The evidence indicates that Claimant's injury was manifest to Employer; however, Employer presented no evidence to show an increased risk of liability to it as a result of the injury.

Employer submitted a report by Dr. Robert A. Rashti, who examined Claimant on August 21, 1985. Dr. Rashti found: "Despite Mr. Humphries loss of the left arm in 1957 he was not

disabled until subsequent injuries incurred from his spinal cord trauma which was sustained in December, 1974." He noted that the Claimant's neurological deficits, which are related directly to his 1974 accident, "in themselves render the patient disabled and are only compounded by the previous loss of his left hand." He also states that in his opinion, the 1974 accident had rendered Claimant permanently and totally disabled. (Employer's Exhibit Number 7).

Based on Dr. Rashti's report and Claimant's testimony, I find that Claimant's arm amputation did not contribute to his permanent total disability. I find that Claimant would have been rendered permanently and totally disabled as a result of his 1974 accident regardless of whether he had previously had his arm amputated.

Because Claimant's pre-existing condition did not contribute to his permanent total disability, which was caused solely by the 1974 accident, I find that Section 8(f) is inapplicable to the present claim.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS ORDERED that:

1. Cargill, Incorporated pay to the Claimant compensation for permanent total disability at the rate of 66 2/3 per centum of claimant's average weekly wage of $267.65 from December 23, 1974, the date of the accident, and continuing. Credit will be given to Employer for prior voluntary compensation payments.

2. Cargill, Incorporated pay to the Claimant $295.00 to cover the cost of medical bills incurred as a

result of Claimant's pass-out episodes in March and June of 1985.

3. Cargill, Incorporated pay to the Claimant's wife compensation for nursing and attendant services she provides for Claimant at the weekly rate of $574.00 from the day Claimant returned from the hospital and continuing.

4. Interest shall be paid on accrued benefits from the date each installment was due until paid. Prior to October 1, 1982, the interest shall be six percent per annum. For payments due after October 1, 1982, the interest rate shall be the rate in effect on the date this Decision and Order is filed by the Deputy Commissioner pursuant to Grant v. Portland Stevedoring Co., 17 BRBS 20 (1985).

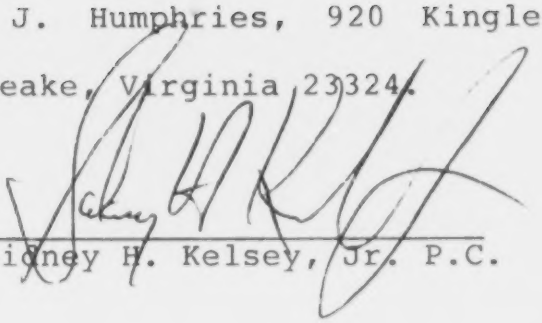
s/FRANK J. MARCELLINO
FRANK J. MARCELLINO
Administrative Law Judge

Dated 17 JAN 1986
Washington, D.C.
FJM:TC:kat

CERTIFICATE OF SERVICE

I certify that on the 28th day of January, 1988, forty (40) copies of the foregoing Appendices to Petition for Writ of Certiorari were transmitted to the Clerk, Supreme Court of the United States and three (3) copies thereof were mailed to each of the following: Solicitor General, Department of Juctice, Washington, D.C. 20530; Mr. Lawrence W. Rogers, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite S-3524, NDOL, Washington, D.C. 20210; Joshua T. Gillelan, II, Esquire, Office of the Solicitor, U.S. Department of Labor, Suite N-2620, NDOL, Washington, D.C. 20210; Forest A. Nester, Esquire, SEYFARTH, SHAW, FAIRWEATHER & GERALDSON, 1111 19th Street, N.W., Washington, D.C. 20036, counsel for Cargill Inc.,

and Clifton J. Humphries, 920 Kinglet Avenue, Chespeake, Virginia 23324.



Sidney H. Kelsey, Jr. P.C.